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David E. Bruhn DORSEY & WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis MN 55402-1498

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In re Application of Drogue et al.
Application No.10/628,588
Filed: July 28, 2003
Attorney Docket Number: 6970.02
Title of Invention: FLUID AND BIOAEROSOL OFFICE OF PETITIONS

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

MANAGEMENT

This is in response to the renewed petition under 37 CFR §1.47(a), filed June 25, 2004.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 81 136(a) the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on July 28, 2003, without a signed oath or declaration and naming Jeffrey Drogue, Leonard Schultz and Barry Thompson as joint inventors.

Accordingly, on October 27, 2003, a "Notice to File Missing Parts of Application" was mailed, requiring for the purposes of this decision, an executed oath or declaration and a \$65.00 surcharge for its late filing.

In response, on February 23, 2004, applicant submitted a petition, the \$65.00 surcharge for late filing oath or declaration fee, and a partially executed declaration naming, Jeffrey Drogue, Leonard Schultz and Barry Thompson as joint inventors. A petition filed under 37 CFR 1.47 was dismissed on April 26, 2004.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

As to item (1), rule 47 applicant has failed to show that co-inventor Drogue was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The petition and the copy of the e-mail provided states only assignment and power of attorney documents were sent to the non-signing inventor. Unless inventor Drogue was presented with a copy of the application papers (specification, claims and drawings), he could not attest that he has "reviewed and understands the application papers," and therefore, could not sign the declaration which he was given. The fact that inventor Drogue reviewed the provisional application does not mean applicant is not required to present the entire non-provisional application for inventor Drogue's review. Inventor Drogue must be presented with the opportunity to review and sign the application papers before rule 47 status will be granted. Petitioner's arguments that Drogue was appraised of the application and understood the invention are not persuasive. are not persuasive.

The \$130.00 petition fee is being returned to deposit account 04-1420 as an additional fee is not required where petitioner timely submitted a request for reconsideration.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450 Alexandria, VA 22313-1450

By facsimile:

(703) 872-9306

By delivery service: (FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office 220 20th Street S. Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251 until September 24, 2004, thereafter (571) 272-3215.

Charlema R. Grant Petitions Attorney Office of Petitions

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